

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

July 16, 2009

A meeting of the Board of Environmental Protection was held on Thursday, July 16, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler.

Absent: M. Wing Goodale, Donald Guimond and Frank Woodard

Staff: Stacy Ladner, Bureau of Remediation and Waste Management

Others: David P. Littell, Commissioner
Jan McClintock, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 12:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Energy Bill: Waxman-Markey bill has passed the House. Maine and other RGGI states have concerns with some provisions of the bill associated with off-set standards and would like to see more of the revenue allocated to energy efficiency and adaptation strategies (people and wildlife). Additionally, the Department disagrees with the prohibition on looking at the lifecycle cost of bio-fuels. Overall the administration is supportive of moving forward and will work to address some of these concerns on the Senate side.

Salmon Pond - Invasive plant update: The Department and Inland Fish and Wildlife has initiated five (5) dives to hand remove the Eurasian milfoil plant that was found in the pond last year. Unfortunately the milfoil continues to spread resulting in the need to investigate more aggressive measures to eradicate the plant.

Tidal Energy (Downeast in half moon cove). The Department has concerns about the proposed tidal energy project in Half Moon Cove (Perry / Eastport) and is preparing comments for submission to FERC.

Greenhouse Gas (GHG): The State of California has received a waiver from the US Environmental Protection Agency related to emissions of greenhouse gases from motor vehicles. This action allows rules adopted in other states to become effective immediately. Enforcement of these GHG regulations will be delayed for one year to allow time for compliant cars to be processed through the distribution chain.

Atlantic Salmon: A recent proposed listing of the Atlantic Salmon as “endangered” on the Kennebec, Androscoggin and Penobscot Rivers may trigger licensing re-openers for hydro-power projects to allow for Salmon passage.

Board member Matt Scott noted that in his experience working on project SHARE (salmon habitat and river restoration) Downeast the “endangered” listing has not adversely impacted existing uses (e.g. agriculture or forestry) but focused on habitat protection for species recovery.

Penobscot River Restoration: The Penobscot Restoration Trust will receive \$6.7 million in federal stimulus funding for the removal of two dams (opening 1,000 miles of river for 11 species of diadromous fish) and the installation of fish passage at a third dam.

LD 1333: The Legislature modified language in LD 1333 deferring the climate change provisions until next year. The portion of the bill that remained focused on fish passage through culverts. A comprehensive survey in the lower Penobscot showed that a significant number of culverts either restrict or prevent fish passage entirely. The bill directs the Department to develop standards for culverts to facilitate fish passage. These rules will be major substantive rules, requiring approval by the Legislature.

Safer Chemical Law: The Department has developed a list of chemicals of high concern which will be available shortly. The next stage will be to develop a list of priority chemicals targeted for regulation and potential elimination.

Staffing Updates: Linda Kokemuller, former land licensing supervisor in the Department's Southern Maine Regional Office, was granted disability retirement. Marybeth Richardson is serving as the interim licensing supervisor.

Jim Cassida from the Central Maine Regional Office was recently promoted to Division Director for Land Licensing.

Lastly, Kristin Chamberlain, an environmental specialist in the Land Bureau has recently taken a job working for the Maine Department of Transportation.

Board Jurisdiction:

Maine Power Reliability Project: Central Maine Power filed an application for a 360 mile long transmission corridor with the Department and the application was accepted for processing on Tuesday. The Department has received one request for Board jurisdiction; however, the deadline for such requests is not until July 27th. The Department plans to brief the Board on this project at an upcoming meeting.

Madison: The Town of Madison has asked for Board jurisdiction concerning a request by IF&W for a general permit to use rotenone on specific lakes/ponds to eliminate non-native predatory fish species that were illegally introduced. IFW would then reestablish native fish species. This matter is still being reviewed by the Department.

Note: Board member Matt Scott commented that use of this pesticide is common and has been utilized in the past by IF&W. He notes that it kills fish by blocking oxygen absorption through the gills, but is not toxic to humans, birds or other wildlife.

QUESTIONS

Board member Nancy Ziegler asked if the Department had received any applications for Cod farming.

Commissioner Littell explained that the Department has a general permitting program for fish farming, but that experimental open ocean Cod farming would require a MEPDES permit from the Department. No applications have been received.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS:

The Board's Executive Analyst noted that the next regular meeting (August 6th) would be a full agenda starting with three public hearings on rulemaking followed by consideration of an appeal concerning a wind power project.

D. BOARD CALENDAR: Reviewed.

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (7-0-0-3) on a motion to approve consent agenda items 1 and 2 as presented.

Board members Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members M. Wing Goodale, Don Guimond and Frank Woodard were absent.

1. ELLSWORTH BUILDERS SUPPLY INC., Orland – Administrative Consent Agreement (BLWQ - Land)
2. BORALEX STRATTON ENERGY LP, Eustis – Administrative Consent Agreement (BLWQ – Land)

III. Regular Agenda

1. UNITED STATES SURGICAL CORP. - MALLINCKRODT LLC // HOLTRACHEM site (appeal of the Fourth Procedural Order)

The Board voted (7-0-0-3) on a motion to deny the appeal of the Fourth Procedural Order including Mallinckrodt's *Motion to Dismiss for Failure to Pursue Clean-up in Superior Court and Motion to Dismiss Compliance Order, or in the Alternative, Stay Proceeding for Failure to Adopt Rules of Practice*); and to affirm the Fourth Procedural Order.

The vote was taken pursuant to 38 M.R.S. A. §1361-1371, and the Maine Administrative Procedures Act, Title 5, Chapter 375.

Board members Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members M. Wing Goodale (recused), Don Guimond and M. Wing Goodale were absent.

Next Regular Meeting –Thursday, August 6, 2009 – Holiday Inn/Ground Round